

Khajezadeh, Dina

From: Janice Kennedy <janice.kennedy@njcourts.gov>
Sent: Monday, April 20, 2020 9:30 AM
To: Toscano, Taylor
Cc: Annemarie Midiri; Charles Marvin; Brooke Harley; Jennifer Gottschalk
Subject: RE: [External]State v. Hone, PG 20-607, W-2020-116-1506

Judge Tarantino has granted this request. Please make arrangements for this victim to appear as requested.

Thank you,

*Janice Y. Kennedy
Secretary to the Hon. Mark P. Tarantino, J.S.C.
Superior Court of New Jersey
Burlington Vicinage-Criminal Division
49 Rancocas Road
Mount Holly, NJ 08060
609-288-9500, x38806
Fax 609-826-7072*

From: Toscano, Taylor <TToscano@co.ocean.nj.us>
Sent: Monday, April 20, 2020 9:17 AM
To: Janice Kennedy <janice.kennedy@njcourts.gov>
Cc: Annemarie Midiri <Annemarie.Midiri@njcourts.gov>; Charles Marvin <charles.marvin@njcourts.gov>; Brooke Harley <brooke.harley@njcourts.gov>; Jennifer Gottschalk <jgottschalkesq@gmail.com>
Subject: RE: [External]State v. Hone, PG 20-607, W-2020-116-1506

Good morning,

This matter is currently scheduled before Judge Tarantino tomorrow at 2:30pm. Would Judge Tarantino permit the victim to appear by video?

Thank you,
Taylor Toscano
Ocean County Prosecutor's Office

From: Michelle Consuegra <Michelle.Consuegra@njcourts.gov>
Sent: Monday, April 13, 2020 1:26 PM
To: Jennifer Gottschalk <jgottschalkesq@gmail.com>
Cc: Toscano, Taylor <TToscano@co.ocean.nj.us>; Annemarie Midiri <Annemarie.Midiri@njcourts.gov>; Charles Marvin <charles.marvin@njcourts.gov>; Janice Kennedy <janice.kennedy@njcourts.gov>; Brooke Harley <brooke.harley@njcourts.gov>
Subject: RE: [External]State v. Hone, PG 20-607, W-2020-116-1506

Judge Tarantino advised he wants the matter scheduled for next Tuesday 4/21 at 2:30pm. If you have additional concerns you can also reach out to his chambers directly.

Michelle Consuegra
Assistant Division Manager, Pretrial Services
Criminal Division
49 Rancocas Road, 1st Floor
Mount Holly, NJ
609-288-9500 ext. 38211

From: Jennifer Gottschalk <jgottschalkesq@gmail.com>
Sent: Monday, April 13, 2020 12:23 PM
To: Michelle Consuegra <Michelle.Consuegra@njcourts.gov>
Cc: TToscano@co.ocean.nj.us; Annemarie Midiri <Annemarie.Midiri@njcourts.gov>; Charles Marvin <charles.marvin@njcourts.gov>
Subject: Re: [External]State v. Hone, PG 20-607, W-2020-116-1506

Ok, thank you. I appreciate your efforts!

On Mon, Apr 13, 2020 at 12:22 PM Michelle Consuegra <Michelle.Consuegra@njcourts.gov> wrote:

If we cannot come to an agreement on the date I will need to have a Judge address the scheduling if the AP is requesting more time to respond.

Michelle Consuegra

Assistant Division Manager, Pretrial Services

Criminal Division

49 Rancocas Road, 1st Floor

Mount Holly, NJ

609-288-9500 ext. 38211

From: Jennifer Gottschalk <jgottschalkesq@gmail.com>
Sent: Monday, April 13, 2020 11:53 AM
To: Michelle Consuegra <Michelle.Consuegra@njcourts.gov>
Cc: TToscano@co.ocean.nj.us; Janice Kennedy <janice.kennedy@njcourts.gov>; Annemarie Midiri <Annemarie.Midiri@njcourts.gov>; Charles Marvin <charles.marvin@njcourts.gov>
Subject: Re: [External]State v. Hone, PG 20-607, W-2020-116-1506

My client will not consent. He wants it this week. Please. We have the order from Judge Acquaviva.

On Mon, Apr 13, 2020 at 11:33 AM Michelle Consuegra <Michelle.Consuegra@njcourts.gov> wrote:

Sorry 4/21

Michelle Consuegra

Assistant Division Manager, Pretrial Services

Criminal Division

49 Rancocas Road, 1st Floor

Mount Holly, NJ

609-288-9500 ext. 38211

From: Michelle Consuegra

Sent: Monday, April 13, 2020 11:33 AM

To: 'Toscano, Taylor' <TToscano@co.ocean.nj.us>; 'Jennifer Gottschalk' <jgottschalkesq@gmail.com>; Janice Kennedy <janice.kennedy@njcourts.gov>

Cc: Annemarie Midiri <Annemarie.Midiri@njcourts.gov>; Charles Marvin <charles.marvin@njcourts.gov>

Subject: RE: [External]State v. Hone, PG 20-607, W-2020-116-1506

Just to clarify 4/20

Michelle Consuegra

Assistant Division Manager, Pretrial Services

Criminal Division

49 Rancocas Road, 1st Floor

Mount Holly, NJ

609-288-9500 ext. 38211

From: Michelle Consuegra

Sent: Monday, April 13, 2020 11:32 AM

To: Toscano, Taylor <TToscano@co.ocean.nj.us>; Jennifer Gottschalk <jgottschalkesq@gmail.com>; Janice Kennedy <janice.kennedy@njcourts.gov>

Cc: Annemarie Midiri <Annemarie.Midiri@njcourts.gov>; Charles Marvin <charles.marvin@njcourts.gov>

Subject: RE: [External]State v. Hone, PG 20-607, W-2020-116-1506

OK Tuesday at 9am before Judge Garrenger

Michelle Consuegra

Assistant Division Manager, Pretrial Services

Criminal Division

49 Rancocas Road, 1st Floor

Mount Holly, NJ

609-288-9500 ext. 38211

From: Toscano, Taylor <TToscano@co.ocean.nj.us>

Sent: Monday, April 13, 2020 11:32 AM

To: Michelle Consuegra <Michelle.Consuegra@njcourts.gov>; Jennifer Gottschalk <jgottschalkesq@gmail.com>; Janice Kennedy <janice.kennedy@njcourts.gov>

Cc: Annemarie Midiri <Annemarie.Midiri@njcourts.gov>; Charles Marvin <charles.marvin@njcourts.gov>

Subject: RE: [External]State v. Hone, PG 20-607, W-2020-116-1506

Tuesday would be best. I have a victim advocate reaching out and I'll prepare a response hopefully within a day or so.
Thank you!

From: Michelle Consuegra <Michelle.Consuegra@njcourts.gov>

Sent: Monday, April 13, 2020 11:30 AM

To: Toscano, Taylor <TToscano@co.ocean.nj.us>; Jennifer Gottschalk <jgottschalkesq@gmail.com>; Janice Kennedy <janice.kennedy@njcourts.gov>

Cc: Annemarie Midiri <Annemarie.Midiri@njcourts.gov>; Charles Marvin <charles.marvin@njcourts.gov>

Subject: RE: [External]State v. Hone, PG 20-607, W-2020-116-1506

Yes we can do Friday or Tuesday next week?

Michelle Consuegra

Assistant Division Manager, Pretrial Services

Criminal Division

49 Rancocas Road, 1st Floor

Mount Holly, NJ

609-288-9500 ext. 38211

From: Toscano, Taylor <TToscano@co.ocean.nj.us>

Sent: Monday, April 13, 2020 11:29 AM

To: Michelle Consuegra <Michelle.Consuegra@njcourts.gov>; Jennifer Gottschalk <jgottschalkesq@gmail.com>; Janice Kennedy <janice.kennedy@njcourts.gov>

Cc: Annemarie Midiri <Annemarie.Midiri@njcourts.gov>; Charles Marvin <charles.marvin@njcourts.gov>

Subject: RE: [External]State v. Hone, PG 20-607, W-2020-116-1506

I am still waiting to hear back from the victim on this new motion for her input. Not sure if I will hear from her by then, and I would still need time to prepare a response. I believe tomorrow would be too soon. Can this be scheduled for late this week or early next week please?

From: Michelle Consuegra <Michelle.Consuegra@njcourts.gov>

Sent: Monday, April 13, 2020 11:24 AM

To: Jennifer Gottschalk <jgottschalkesq@gmail.com>; Janice Kennedy <janice.kennedy@njcourts.gov>; Toscano, Taylor <TToscano@co.ocean.nj.us>

Cc: Annemarie Midiri <Annemarie.Midiri@njcourts.gov>; Charles Marvin <charles.marvin@njcourts.gov>

Subject: RE: [External]State v. Hone, PG 20-607, W-2020-116-1506

It can be scheduled for tomorrow, are you both available?

Michelle Consuegra

Assistant Division Manager, Pretrial Services

Criminal Division

49 Rancocas Road, 1st Floor

Mount Holly, NJ

609-288-9500 ext. 38211

From: Jennifer Gottschalk <jgottschalkesg@gmail.com>

Sent: Monday, April 13, 2020 10:55 AM

To: Janice Kennedy <janice.kennedy@njcourts.gov>; Michelle Consuegra <Michelle.Consuegra@njcourts.gov>; TToscano@co.ocean.nj.us

Subject: [External]State v. Hone, PG 20-607, W-2020-116-1506

CAUTION: This email originated from outside the Judiciary organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I am attaching materials I have just filed in e-courts. It is a new motion to modify conditions of pre-trial release on behalf of my client, Richard Hone.

Please schedule it at the earliest possible date.

Thanks!

Jennifer Gottschalk

--
JENNIFER L. GOTTSCHALK, ESQUIRE

1920 Fairfax Avenue

Cherry Hill, New Jersey 08003

NJ Bar ID 003391980

phone- [REDACTED]

fax-(856)295-8939

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--
JENNIFER L. GOTTSCHALK, ESQUIRE

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fax-(856)295-8939

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Khajezadeh, Dina

From: Toscano, Taylor <TToscano@co.ocean.nj.us>
Sent: Sunday, April 26, 2020 1:19 PM
To: Jennifer Gottschalk; Fatima Agosto
Subject: RE: State v. Richard Hone

Ms. Gottschalk,

The Attorney General's Office has been very clear, as stated in the letter I provided with my latest response to your motion. They are not taking this case, nor can they be ordered by a Judge to take this case, per the statute. Additionally, even if the motion to disqualify my office was granted, it would not be fair for another agency/office taking this case to be expected to argue a motion that I responded to.

Taylor Toscano

From: Jennifer Gottschalk <jgottschalkesq@gmail.com>
Sent: Sunday, April 26, 2020 1:09 PM
To: Fatima Agosto <fatima.agosto@njcourts.gov>; Toscano, Taylor <TToscano@co.ocean.nj.us>
Subject: State v. Richard Hone

Hi,
Would it make sense to have Assistant Prosecutor Toscano notify the Attorney General's Office to be standing by, in the event that our motion to disqualify/remove the Ocean County Prosecutor's Office from the proceedings granted? That way, our second motion to transfer the case to the Family Part can be heard that day, as scheduled.

Regards,
Jennifer Gottschalk

--
JENNIFER L. GOTTSCHALK, ESQUIRE
1920 Fairfax Avenue
Cherry Hill, New Jersey 08003
NJ Bar ID 003391980
phone-
fax-(856)295-8939

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Khajezadeh, Dina

From: Jennifer Gottschalk <jgottschalkesq@gmail.com>
Sent: Tuesday, April 21, 2020 11:46 AM
To: Janice Kennedy; Toscano, Taylor
Subject: State v. Hone, Dkt. W-2020-116-1506
Attachments: Hone supp JTarantino2 4-21-20 (1).pdf; Hone order J Ford 2-9-16.pdf; State v. Christie.pdf

Hi, Janice,
Here is a supplemental letter and 2 attachments regarding today's argument.
Thank you,
Jennifer Gottschalk

--
JENNIFER L. GOTTSCHALK, ESQUIRE
1920 Fairfax Avenue
Cherry Hill, New Jersey 08003
NJ Bar ID 003391980
phone-[REDACTED]
fax-(856)295-8939

This email and any attachments are being sent to the intended recipient(s) and may not be disseminated without the permission of the sender, as they may contain PRIVILEGED and CONFIDENTIAL information. The materials may contain ATTORNEY WORK PRODUCT. If you believe that you have received this email in error, kindly destroy the communication, and contact this law office concerning the erroneous mailing.

JENNIFER L. GOTTSCHALK, ESQ.

ATTORNEY AT LAW
1920 FAIRFAX AVE.
CHERRY HILL, N.J. 08003
(856) 432-1885
(732) 835-8064
(fax)(856)295-8939

Jennifer L. Gottschalk, Esq.
NJ Bar ID Number 003391980
Admitted in NJ & MD
jgottschalkesq@gmail.com

April 21, 2020

Hon. Mark P. Tarantino, J.S.C.
Superior Court, Law Division
P.O. Box 6555
Mount Holly, New Jersey 08060
By email to Janice.kennedy@njcourts.gov

Re: State v. Richard Hone
Docket No. W-2020-116-1506

Your Honor:

Please accept this additional submission in support of defendant's motion to remove the Ocean County Prosecutor's Office from this case.

The State has argued that there is no basis for the disqualification of the Ocean County Prosecutor's Office, that, in essence, defendant's lawsuit against that office is pretextual and designed to create the conflict. It also cited two out-of-state cases in support of the "heavy burden" it argues that defendant has not met to establish the conflict of interest to warrant disqualification. It is unnecessary to resort to extraneous legal sources to arrive at a decision to disqualify here.

There is an additional basis for disqualification in this case. In February 2016, the Hon. Marlene Lynch Ford, A.J.S.C., entered a "no contact" order against defendant barring him from any and all communication with the judiciary staff in the Superior Court, Ocean County, AND with the Ocean County Prosecutor's Office, except through regular U.S. mail. It is submitted that this "no contact" order interferes with my client's ability to defend himself in the present action.

An “appearance of impropriety [in a conflict of interest] is determined not from the perspective of the attorney involved but from the public’s vantage.” State v. Harvey, 175 N.J. 522, 531 (2003) (quoting In re Opinion 653, 132 N.J. 124, 132 (1993)). It is constitutionally fundamental that a conflict of interest cannot impair a criminal defendant’s ability to mount a defense. Cuyler v. Sullivan, 446 U.S. 335 (1980).

Our courts have reviewed claims in criminal cases that prosecutors’ offices should be disqualified, but none have involved the unique facts here. For instance, in State v. Irizarry, 271 N.J. Super. 577 (App. Div. 1994), the Appellate Division reviewed the defendant’s application for disqualification of the entire Essex County Prosecutor’s Office in a capital murder case, where the defendant claimed that members of the office would be subpoenaed by him in the penalty phase to testify about his cooperation on another matter. Writing for the court, Judge Keefe declined to order that remedy because it would establish “a dubious precedent” that disqualification would be required when a defendant “endeavored to call a prosecutor as a witness.” Id. at 601. And in an unreported Appellate Division in 2018, that court noted that there was no authority “for the recusal of a county prosecutor’s office or for finding an appearance of conflict if a county prosecutor recuses himself or herself and the members of the office continue to perform their obligations as prosecutors in the same matter.” State v. Christie, 2018 WL 5780475, *4, Docket A-3549-16T4 (2018) (emphasis added) (where the Appellate Division rejected a private citizen’s application for appointment of a special prosecutor in a criminal claim against the then-governor). Neither addressed a defendant’s constitutional ability to defend himself. Yet, it is submitted that

these decisions provide guidance to this Court about factors to consider in the present case, namely, (1) whether a defendant can receive fair consideration of his case by the public entity charged with rendering an impartial prosecution of him, and (2) whether there is an appearance of a conflict that the public would perceive. The Ocean County Prosecutor's Office is in no position to assure this Court that it can satisfy either criteria. The "no contact" order in effect demonstrates a prior, exceptionally contentious relationship between that entire office and this defendant and should imply to this Court that the office cannot render a fair review of any alleged criminality by defendant. The conduct of government attorneys "must be even more circumspect than the conduct of private attorneys because government attorneys are 'invested with the public trust and because they are more visible to the public.'" Irizarry, 271 N.J. Super. at 597 (quoting In re Cipriano, 68 N.J. 398, 403-04 (1975)); see also In re Opinion No. 653, 132 N.J. at 130-31.

Finally, there exists the consideration that a prosecutor's office may have a conflict of interest if it has a financial stake in the outcome of a pending proceeding involving a criminal defendant. In State v. Marshall(I), 123 N.J. 1, 176 (1991), cert. denied, 507 U.S. 929 (1993), the Supreme Court of New Jersey noted that disqualification of the county prosecutor in a remand hearing was not warranted, commenting that,

[i]t's not a situation that seems to call for a disqualification of the Prosecutor. It's not a situation in which the Prosecutor has this type of nefarious interest such as ... a personal financial state in the outcome of the case... .

The entire Ocean County Prosecutor's Office should be disqualified based upon the breadth of the "no contact" order of Judge Ford. This

JENNIFER L. GOTTSCHALK, ESQ.

April 21, 2020

Page Number 4

expands on the case law in New Jersey addressing conflicts involving individual named prosecutors; here, all the members of the Ocean County Prosecutor's Office from 2016 forward, are shielded from contact by defendant.

Based upon the foregoing, and on his earlier submission, it is respectfully submitted that defendant's motion to remove the Ocean County Prosecutor's Office must be granted.

Respectfully submitted,

A handwritten signature in blue ink that reads "Jennifer L. Gottschalk". The signature is written in a cursive, flowing style.

Jennifer L. Gottschalk, Esquire

w/encl.

c: Taylor Toscano, Asst. Ocean County Prosecutor

JENNIFER L. GOTTSCHALK, ESQ.

April 21, 2020

Page Number 5

State of New Jersey

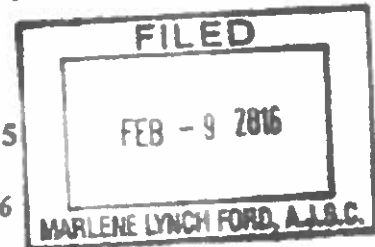
Superior Court of New Jersey
Chancery Division-Family Part
Ocean County

v.

Richard Hone

Docket No. FO-15-422-15

WARRANT # 2015-520-1506



**ORDER RESTRAINING DEFENDANT FROM
COMMUNICATING WITH COURT EXCEPT
AS PROVIDED HEREIN**

This matter came before the Court for trial on October 16, 2015, at which time the Court entered a judgment of conviction on various charges before it. On November 20, 2015, after notice to the Defendant, this matter was set for sentencing, and the Court entered an order imposing sentence.

This order shall supplement the order imposing sentence entered November 20, 2015 and administratively modified by order entered November 24, 2015.

Defendant failed to appear for the trial or for sentencing although properly noticed. He was tried and sentenced in absentia.

Prior to and since entry of the final orders in this matter, the Defendant has communicated with Assistant Prosecutor Michel Paulhus; with various members of the Court staff, including staff assigned to the chambers of the Court, directly or indirectly to members of the Court and has generally communicated in disrespectful, harassing, verbally abusive and profane manners. Attached is a sample of a recent communication from Defendant Hone which is consistent with other communications from Mr. Hone directed to the Court or Court staff.

Defendant has refused to provide a current address. He has communicated to the Court, Court staff and representatives of the Office of the Ocean County Prosecutor using electronic and

telephone communications, although he has been instructed to communicate in written form only. He has refused to abide by this request.

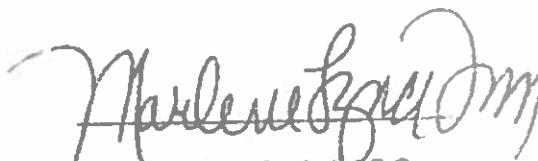
On June 9, 2015 Family Division Manager Joseph Sciana hand delivered to Defendant a letter advising him that any future communication must be in writing only. Defendant has not complied with this request. A copy of that letter is attached to this order and made a part.

**THEREFORE IT IS ON THIS 9TH DAY OF FEBRUARY, 2016 FOR GOOD
CAUSE ORDERED:**

1. That the defendant, Richard Hone, DOB 4/7/1959, shall be and hereby is restrained from communicating with any judges, employees or representatives, or the family members of same, of the Superior Court of New Jersey, Ocean County Vicinage, Toms River, NJ, except written communication directed to the Court by regular mail.
2. That the defendant Richard Hone, shall be restrained from having any contact (including but not limited to telephonic, electronic, written, email, or verbal) with the Ocean County Prosecutor's Office, and in particular Assistant Prosecutor Michel Paulhus, or any other representative of that office (or family member of same) except by written communication sent to the Office of the Ocean County Prosecutor by regular mail.
3. That the defendant, Richard Hone, shall be restrained from making any harassing communications (including but not limited to telephonic, electronic, written, email or verbal) to the Court, any employees or representatives (or family members of same) of the Superior Court of New Jersey, Ocean County vicinage.
4. That a copy of this order shall be provided to the Defendant through his email address [REDACTED] Defendant shall within 14 days of receipt of this order provide

the Court with the Defendant's current address for the purpose of directing any future court related correspondence.

5. That Defendant shall be permitted to make application to the Court to dissolve or modify the restraints contained herein by filing a notice of motion, on notice to the Office of the Ocean County Prosecutor, and otherwise in accordance with the Rules of Court.
6. That a copy of this order shall be provided to the Assistant Prosecutor of record, Michel Paulhus. A copy of this order shall also be placed in all Court files in which the Defendant is a party, including but not limited to FO-15-514-15; FO-15-422-15; FV-15-1271-15; FV-15-113-15 and FD-15-802-15.



Marlene Lynch Ford, A.J.S.C.

2018 WL 5780475

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of New Jersey, Appellate Division.

STATE of New Jersey, Plaintiff-Respondent,

v.

Christopher J. CHRISTIE, Defendant-Respondent.

DOCKET NO. A-3549-16T4

Argued September 18, 2018

Decided November 5, 2018

On appeal from Superior Court of New Jersey, Law Division, Bergen County, Municipal Appeal No. 16-1945.

Attorneys and Law Firms

Donald F. Burke argued the cause for appellant William J. Brennan.

William P. Miller, Special Deputy Attorney General/ Acting Assistant Prosecutor, argued the cause for respondent State of New Jersey (Dennis Culo, Acting Bergen County Prosecutor, attorney; John J. Scaliti, Legal Assistant, on the brief).

Nevin H. Marino argued the cause for respondent Christopher J. Christie (Marino, Tortorella & Boyle, PC, attorneys; Craig Carpenito, on the brief).

Before Judges Yannotti, Rothstadt and Gilson.

Opinion

PER CURIAM

*1 In this appeal, we are asked whether under the unique circumstances of this case, a private citizen has standing to seek the court's appointment of an independent special prosecutor to pursue a citizen-complaint once probable cause has been determined. We conclude that such standing does not exist. Accordingly, we affirm the Law Division's order determining that the complainant in this case did not have standing to seek that relief.

This matter arose out of a citizen-complaint filed by William J. Brennan under Rule 7:2-2(a)(1). That rule provides in pertinent part:

Citizen Complaint. A Complaint-Warrant ... or a summons charging any offense made by a private citizen may be issued only by a judge or, if authorized by the judge, by a municipal court administrator or deputy court administrator of a court with jurisdiction in the municipality where the offense is alleged to have been committed within the statutory time limitation. The complaint-warrant ... or summons may be issued only if it appears to the judicial officer from the complaint, affidavit, certification or testimony that there is probable cause to believe that an offense was committed, the defendant committed it, and a Complaint-Warrant or summons can be issued.

In accordance with the Rule, Brennan filed a complaint in Fort Lee alleging defendant, former governor Christopher J. Christie, committed an act of second-degree official misconduct, N.J.S.A. 2C:30-2(b), that was related to the incident that has become known as "Bridgegate." The complaint stated that defendant committed an act of official misconduct when he "refrained from ordering that his subordinates take all necessary action to re-open local access lanes to the George Washington Bridge."

The matter was transferred from Fort Lee to the Municipal Court for Vicinage II (Bergen County), and that court scheduled the matter for a probable cause hearing. Prior to the hearing, then-Attorney General, Christopher S. Porrino, and then-Bergen County Prosecutor, Gurbir S. Grewal, recused themselves from individually participating in the matter. Responsibility for the matter was turned over to a First Assistant County Prosecutor (FACP). At the hearing on October 13, 2016, the municipal court judge did not permit either defendant or his counsel to participate and after considering evidence presented by Brennan, the judge determined that there was probable cause for the complaint's filing and referred the matter to the Bergen County Prosecutor's Office (BCPO).

On October 19, 2016, Brennan filed an emergent motion before the Law Division to disqualify the Office of Attorney General (OAG) and all county prosecutors due to an alleged conflict of interest, and for the appointment a special prosecutor. On December 2, 2016, Judge Bonnie J. Mizdol issued an order, accompanied by a written opinion, denying Brennan's motion because as a civilian complainant, he lacked standing to pursue the application for a special prosecutor. She found that Brennan's "role in this matter concluded at the end of the probable cause hearing." Relying on Rule 3:25-1(a), and Rule 3:23-9, Judge Mizdol determined that after the matter was "turned over to the [BCPO], [it] possess[ed] sole authority regarding whether or not to pursue the matter further." The judge concluded that "[b]ased upon Brennan's lack of standing, [she was] precluded from entertaining the substantive issue[s]" of his arguments.

*2 Brennan moved for reconsideration and on December 23, 2016, Judge Mizdol issued an order and written opinion denying the motion. The judge found that Brennan failed to "put forth any case law, statute, rule, regulation, or constitutional provision" justifying his application.

In the meantime, on November 2, 2016, defendant filed a motion in the Law Division for leave to file an interlocutory appeal of the municipal court judge's finding of probable cause. On January 12, 2017, Judge Mizdol issued an order and written opinion granting defendant's motion for leave to appeal, but denying his motion to dismiss the complaint with prejudice. She remanded the matter to the municipal court for a new probable cause hearing because defendant's counsel was not permitted to participate at the first hearing.

Prior to the new probable cause hearing, on January 27, 2017, the FACP wrote a nine-page letter to Judge Mizdol as required by Rule 3:25-1(a), explaining that his office did "not intend to pursue the charges against defendant based on [its] review of the evidence and [its] ethical obligations." According to the FACP, based on his office's investigation, "[t]he charge cannot be proven beyond a reasonable doubt." Notwithstanding the BCPO's determination, on February 2, 2017, the municipal court judge conducted a new probable cause hearing. Due to the BCPO's decision not to pursue the charges against defendant, and despite Judge Mizdol's reason for remanding, defendant's counsel waived his right to appear at the hearing and the matter proceeded without defendant's participation.

At the hearing, Brennan again moved for the appointment of a special prosecutor. The municipal court judge denied the request, stating: "the problem that I have with ... Brennan's request is the same that Judge Mizdol had, namely that we can't let witnesses decide who will prosecute cases, and that is ... Brennan's status, he is a witness for the State." The judge reserved the issue of probable cause until February 16, 2017, when he rendered an oral decision finding again that there was sufficient probable cause for a complaint-summons to issue against defendant.

Brennan appealed the municipal court judge's denial of his motion to appoint a special prosecutor. He also sought referral of the matter to a grand jury, alleging that the prosecutor's refusal to prosecute was an abuse of his discretion. In response, the FACP wrote to Judge Mizdol, informing her that his office had "administratively dismissed the ... complaint" against defendant and its "review of the transcript of the municipal court judge's February 2017 probable cause finding provides no additional insights or bases which would warrant the [BCPO] taking a different tack."

On March 17, 2017, Judge Mizdol issued an order, accompanied by a nine-page written decision, affirming the municipal court judge's denial of Brennan's request to appoint a special prosecutor. Judge Mizdol observed that Brennan's appeal was actually a motion for reconsideration of her earlier order and denied that relief. The judge ruled that Brennan's lack of standing was a "settled legal issue" in the case and she would "not consider the merits of [his] standing ... for yet a third time." Judge Mizdol also denied Brennan's request to refer the matter to the grand jury. She stated:

*3 While the court remains forever mindful of the heightened concern for conflict when a governor is facing criminal prosecution by the very state he is tasked to govern, it rejects Brennan's argument that [the] BCPO abused its prosecutorial discretion. This court is satisfied that [the] BCPO has, to avoid an actual or perceived appearance of impropriety, designated a prosecutor not appointed by [defendant] or his administration, who has unbridled discretion to present the charges to a

grand jury, downgrade the charges to a lesser offense or dismiss the charges. R. 3:25-1 (a)].

There is nothing in the record to suggest [the] BCPO arbitrarily dismissed the complaint in lieu of conducting a thorough investigation and soundly exercising its discretion to dismiss.

The court is satisfied that [the] BCPO exercised its duties in good faith and with sound discretion, carefully examining available evidence, the law, and the facts.

The judge also addressed Brennan's argument that "declining to prosecute a charge where a probable cause finding has been made is 'reasonably' perceived by the public as impropriety, warranting the appointment of a special prosecutor." The judge stated the following about Brennan's contention:

This argument neglects the distinction between the threshold proofs sufficient to sustain a finding of "probable cause" and those required to sustain the "beyond a reasonable doubt" burden of proof. In its detailed March 2, 2017, letter notifying the court of its decision to administratively dismiss the complaint, [the] BCPO reasoned that it does not believe that it can prove the charge of official misconduct beyond a reasonable doubt. The court finds the BCPO's representation of inability to meet this highest burden of proof to be a valid justification for administrative dismissal, as a "prosecutor should not ... permit the continued pendency of criminal charges in the absence of sufficient admissible evidence to support a conviction."

[citation omitted.]

This appeal followed.

In his appeal from Judge Mizdol's last order, Brennan argues that the "appearance of partiality" mandated the appointment of a "special prosecutor ... in order to maintain public confidence in the administration of justice." According to Brennan, "[i]n order to give meaning to Rule 7:2-2(a)(1), a citizen must be afforded the right to seek [the] appointment of an independent special prosecutor when the prosecutor making the decision as to whether to proceed with the case once probable cause is found has an indisputable conflict[.]" Brennan avers that "a special prosecutor must be appointed in order to maintain public confidence in the administration of justice[.]" Relying on In re Thirty-Fifth Statewide Investigating Jury, 112 A.3d 624 (Pa. 2015), a Pennsylvania case, he argues that "[o]ther States have recognized the inherent or implied power of the judiciary to preserve and protect the proper administration of justice" by appointing a special prosecutor. Brennan also contends that he has standing to seek the appointment under Rule 7:2-2(a)(1) and that this appeal has not been rendered moot by the FACP's decision not to pursue a prosecution because the determination "was tainted by the conflict [Brennan is seeking] to be eliminated."

A trial court's determination about standing is a legal issue, subject to our de novo review. "The issue of standing [and a trial judge's interpretation of the law] present[] ... legal question[s] subject to [this court's] de novo review." Courier-Post Newspaper v. Cty. of Camden, 413 N.J. Super. 372, 381 (2010) (citations omitted).

*4 We have considered Brennan's contentions under our de novo standard of review and in light of the record and the applicable legal principles. We conclude that his contentions are without merit. We affirm substantially for the reasons expressed by Judge Mizdol in her thoughtful and comprehensive written decisions. We add only the following comments.

At the outset, we observe that Brennan did not have standing to appeal any of the municipal court's decisions to the Law Division or appeal from Judge Mizdol's orders. See State v. Bradley, 420 N.J. Super. 138, 142 (App. Div. 2011). As a citizen complainant, Brennan's role was limited to that "of the victim or concerned citizen[.]" or witness "report[ing] knowledge of criminal activities to the proper law enforcement authorities." In re Longman, 183 N.J. 133, 139 (2005). Other than as a possible witness, a citizen complainant has no further role in the criminal process. Once a judicial officer determines the existence of probable cause to issue a complaint or summons, it is the prosecutor who reviews the complaint, under Rule 3:2-1, and determines "whether the charges merit presentation to the grand jury or, alternatively, outright dismissal or downgrade to the municipal court." Id. at 144. "The complainant has no right to appeal" the dismissal of a criminal complaint. State v. Vitiello, 377 N.J. Super. 452, 455 (App. Div. 2005), and cannot "act as a prosecuting attorney [for purposes of appeal] without the special approval and process provided in Rule 3:23-9(d)" that are not applicable here. Bradley, 420 N.J. Super. at 142.

Even if Brennan had standing, the premise of his argument for the appointment of a special prosecutor is incorrect. Contrary to Brennan's argument, there was no incurable conflict presented by the BCPO continuing to represent the interests of the State after the County Prosecutor recused himself. There is no authority for the recusal of a county prosecutor's office or for finding an appearance of conflict if a county prosecutor recuses himself or herself and the members of the office continue to perform their obligations as prosecutors in the same matter. See State v. Harvey, 176 N.J. 522, 531 (2003) (refusing to disqualify an entire prosecutor's office based on the conflict of a single prosecutor); State v. Trizotto, 271 N.J. Super. 577, 591 (App. Div. 1994) ("We have found no case that stands for the proposition that an entire prosecutor's office should be disqualified because some members of the office are [faced with a conflict].")

Also, there is no authority in this State for a court to appoint a special prosecutor under the circumstances here. Brennan's reliance on In re Thirty-Fifth Statewide Investigating Jury, in support of his contention that the judiciary has the ability to appoint a special prosecutor is inapposite. First, this court is not bound by out-of-state case law. See Abel Holding Co. v. Am. Dist. Tel. Co., 147 N.J. Super. 263, 271 (App. Div. 1977). Second, that case involved the court's attempt to protect the integrity of the grand jury process under its supervision, pursuant to specific legislation, when it was confronted with a need to investigate Pennsylvania's Attorney General because there were reasonable grounds to believe that she may have compromised grand jury secrecy. In re Thirty-Fifth Statewide Investigating Jury, 112 A.3d at 625. As the Pennsylvania Supreme Court recognized in that case, the facts presented there were distinguishable from a situation where, as here, a litigant seeks the "displacement of a non-conflicted ... official from the performance of his duties." Id. at 631.

*5 In any event, the court in that case was not asked to address the issue of a citizen-complainant's standing to seek the appointment of a special prosecutor under the present circumstances, which the municipal court judge, Judge Mizdol, and we have now found Brennan lacked in this case.

Affirmed.

All Citations

Not Reported in Atl. Rptr., 2018 WL 5780475

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Footnotes

- 1 Brennan evidently also filed a separate petition seeking the appointment of an independent special prosecutor. A copy of the petition was not included in his appendix.

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Khajezadeh, Dina

From: Jennifer Gottschalk <jgottschalkesq@gmail.com>
Sent: Monday, April 27, 2020 11:23 AM
To: Fatima Agosto; Toscano, Taylor
Subject: State v. Richard Hone PG Burl 20-607
Attachments: monmouth county order.pdf; Hone supp JCook 4-27-20.pdf

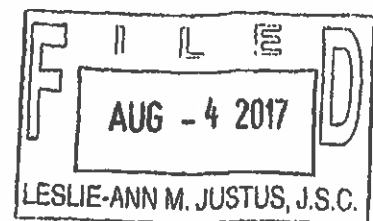
Good Morning,
I have just e-filed a letter to Judge Cook along with an exhibit. Both are attached.
Thank you,
Jennifer Gottschalk

--

JENNIFER L. GOTTSCHALK, ESQUIRE
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Cherry Hill, New Jersey 08003
NJ Bar ID 003391980
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OCEAN COUNTY PROSECUTOR'S OFFICE
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TOMS RIVER, NEW JERSEY 08754



SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - (CRIMINAL)
MONMOUTH COUNTY
CASE NO. 16-00-0548
INDICTMENT NO. 16-10-2072

STATE OF NEW JERSEY,	:	PERMANENT RESTRAINING
	:	ORDER FOR STALKING
	:	CONVICTION PURSUANT TO <u>N.J.S.A.</u>
	:	2C:12-10.1
Plaintiff,	:	
V.	:	
RICHARD HONE,	:	
Defendant.	:	

THIS MATTER having been brought before the Court on application of Heidi Tannenbaum-Newman, Assistant Ocean County Prosecutor, on behalf of the State of New Jersey, and Patricia Beardon, Esq. of the Monmouth County Public Defender's Office appearing on behalf of the defendant Richard Hone;

WHEREAS on April 17, 2017, the defendant, Richard Hone, pled guilty to a crime of Stalking, a third degree crime in violation of N.J.S.A. 2C:12-10c, for which he was sentenced and convicted on August 4, 2017;

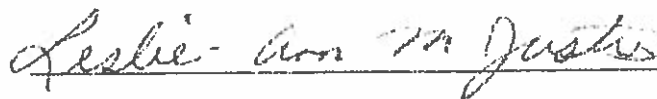
AND the Court having conducted a hearing on the State's application for a permanent restraining order, and the victim [REDACTED] not having requested otherwise;

IT IS THEREFORE on this 4th day of August, 2017 hereby ORDERED that the Defendant, Richard Hone, shall hereafter be permanently subject to a Permanent Restraining Order for said Stalking conviction and be subject to the following conditions pursuant to N.J.S.A. 2C:12-10.1:

1. The defendant Richard Hone is hereby restrained from entering the residence, property, School, or place of employment of the victim [REDACTED] and is hereby required to stay away from the residence and place of employment of [REDACTED].
2. The defendant Richard Hone is hereby restrained from making contact with the victim [REDACTED], whether it be personal contact or contact through an agent, and is restrained from initiating any communication likely to cause annoyance or alarm including, but not limited to, personal, written, or telephone contact, or contact via electronic device, with the victim [REDACTED], her immediately family members, her employers, employees or fellow workers, or others with whom communication would be likely to cause annoyance or alarm to the victim [REDACTED]. *Any and all issues related to the parties' child, [REDACTED], however, shall be controlled by Family Court Docket No. FV-13-01267-17, or by any other duly issued Family Part Order.*
3. "Communication" as proscribed in paragraph 2 herein shall also, pursuant to N.J.S.A. 2C:12-10.1 and N.J.S.A. 2C:1-14q, mean any form of communication made by any means, including, but not limited to, any verbal or written communication; communications conveyed by any electronic communication device, which includes but is not limited to, a wire radio, electromagnetic, photoelectric or photo-optical system; including a cordless, cellular or digital telephone, computer, video recorder, fax machine, pager, or any other

means of transmitting voice or data; and communications made by a sign or gesture.

4. This Permanent Restraining Order shall be in effect throughout the State of New Jersey, and shall be enforced by all law enforcement officers.
5. A violation of this Permanent Restraining Order by the defendant Richard Hone shall constitute an offense under subsection a. of N.J.S.A. 2C:29-9.
Violations of this Order may be enforced in a civil or criminal action initiated by the victim [REDACTED] or by the Court, on its own motion, pursuant to applicable court rules. An enforcement action for violation of this Permanent Restraining Order shall not preclude the filing of a criminal complaint for stalking based on the same act which is the basis for the violation.
6. This Permanent Restraining Order may be dissolved upon the application of the victim [REDACTED] to this Court.

_____

HON. LESLIE-ANN JUSTUS, J.S.C.

JENNIFER L. GOTTSCHALK, ESQ.

ATTORNEY AT LAW
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Admitted in NJ & MD
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April 27, 2020

Hon. Terrence Cook, P.J.S.C.
Superior Court, Law Division
P.O. Box 6555
Mount Holly, New Jersey 08060

Re: State v. Richard Hone
Docket No. W-2020-116-1506

Your Honor:

Please accept this additional submission in support of defendant's motion to transfer the pending criminal matter from the Law Division, Criminal Part, to the Family Part.

When defendant filed his motion, it was anticipated that it would be heard after disposition of the motion to remove the Ocean County Prosecutor's Office from the case. As both matters are being heard by this Court on May 1, it is requested that other counsel representing the state be noticed of the motions and be available to argue the transfer motion to the Court.

In our motion, we cited Court Rules 3:1-5(c) and 5:1-3(b) that direct the manner in which a transfer of venue can occur.

"The transfer provisions of [R.3:1-5(c)] focus primarily on criminal actions arising out of the family relationship... A 'family' criminal action is one in which the gravamen of the offense charged arises out of the family or family-type relationship between the defendant and the victim." Comment, Rule 3:1-5, 2019 Edition, Pressler and Verniero, Rules Governing the Courts of the State of New Jersey (2020).

As set forth in the underlying motion, the alleged criminal violations arise from violation of a permanent restraining order

entered by the criminal court in 2017 as part of the disposition of State v. Richard Hone, Indictment No. 16-10-2072. In that action, defendant pleaded guilty to a charge of stalking, where [REDACTED] was the victim. [REDACTED] is the alleged victim in the present case. And it is well documented that [REDACTED] and defendant are the parents of [REDACTED]. A portion of the pre-trial release order prohibits contact between defendant and the child, an order which defendant is seeking to lift in his pending motion to modify conditions of his pre-trial release that is also pending in the Superior Court in this vicinage. Thus, there is a family relationship in existence in the instant action.

The state has criticized the undersigned for relying upon certification of counsel to assert certain facts in the present application. As indicated, what is asserted in the case can be verified through review of the court filings in the present case and as contained in exhibits submitted by the state and defendant.

As the Court well knows, a criminal defendant has a Fifth Amendment right to remain silent. Miranda v. Arizona, 384 U.S. 436 (1966). In that regard, an attorney representing a defendant in a criminal matter should be able to assert facts that are otherwise verifiable, without resorting to a certification by the client during the pendency of a related criminal case. Often, certifications submitted by counsel in motions in the criminal court contain facts derived from the discovery provided by the state. Again, as in this case, the facts are verifiable based upon the existing materials.

JENNIFER L. GOTTSCHALK, ESQ.

April 27, 2020

Page Number 3

Based upon the foregoing, and on his earlier submission, it is respectfully submitted that defendant's motion to transfer venue of the within matter to the Family Part must be granted.

Respectfully submitted,

A handwritten signature in blue ink that reads "Jennifer L. Gottschalk". The signature is written in a cursive style with a large, stylized "J" and "G".

Jennifer L. Gottschalk, Esquire

c: Taylor Toscano, Asst. Ocean County Prosecutor